

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

NEIL MEURER)
)
Plaintiff)
) CIVIL ACTION
v.)
) FILE NO. _____
HUMANA EMPLOYERS HEALTH)
PLAN OF GEORGIA, INC., and)
JOHN DOES 1-5)
)
Defendants)

NOTICE OF REMOVAL TO THE
UNITED STATES DISTRICT COURT

Defendant HUMANA EMPLOYERS HEALTH PLAN OF GEORGIA, INC. (“Humana”), gives notice of the removal of plaintiff’s complaint. In support thereof, Humana respectfully shows the following facts:

1.

This action was commenced in the State Court of Gwinnett County, Georgia, on March 9, 2021, where it is pending as Civil Action File No. 21-C-01801-S2.¹

¹The style of the original Complaint identifies the court as the Superior Court of Gwinnett County. The action, however, was filed in the State Court of Gwinnett County.

2.

The Complaint and a summons were served on the registered agent for Humana on March 23, 2021.

3.

This notice of removal to this United States District Court is filed within 30 days of service in accordance with 28 U.S.C. §§ 1441 and 1446.

4.

In this action, Plaintiff seeks to recover medical expense benefits under an employee welfare benefit plan sponsored and maintained by Cooling & Winter, LLC. Plaintiff's complaint sets forth state law claims of breach of contract, unjust enrichment, and bad faith and stubborn litigiousness.

5.

The plan is funded by a group policy of insurance issued by Humana. A copy of the applicable group insurance certificate is attached as Exhibit A.

6.

Although alleged as state law claims, Plaintiff's claims arise under Section 502(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), 29 U.S.C. § 1132(a)(1)(B). ERISA completely preempts any state law claims alleged in Plaintiff's Complaint.

7.

A cause of action filed in state court which is preempted by ERISA and which comes within the scope of section 502(a)(1)(B) of ERISA is removable to federal court under 28 U.S.C. § 1441 as an action arising under federal law even when the ERISA-related nature of the action does not appear on the face of the complaint. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987). Thus, this action is one over which this United States District Court has original federal question jurisdiction pursuant to 28 U.S.C. § 1331 and/or 29 U.S.C. § 1132(e)(1).

8.

Venue is appropriate in the Northern District of Georgia because the State Court of Gwinnett County is located within this judicial district. *See* 28 U.S.C. § 1441(a).

9.

A copy of this notice of removal will be promptly filed in the State Court of Gwinnett County, Georgia, as provided by law.

10.

Attached hereto are the following documents:

Exhibit B – The Complaint filed by Plaintiff in the State Court of Gwinnett County, Georgia;

Exhibit C – Plaintiff’s First Interrogatories to Defendant;

Exhibit D – Plaintiff’s First Request for Production of Documents to Defendant; and

Exhibit E – Notice of Removal submitted to the State Court of Gwinnett County.

WHEREFORE, defendant HUMANA EMPLOYERS HEALTH PLAN OF GEORGIA, INC., prays that the State Court of Gwinnett County, Georgia, proceed no further with Civil Action File No. 21-C-01801-S2 and that said action be removed to the United States District Court for the Northern District of Georgia, Atlanta Division.

This 21st day of April, 2021.

/s/ Kenton J. Coppage
Kenton J. Coppage
Georgia Bar No. 187190
Elizabeth G. Brunette
Georgia Bar No. 560454

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Attorneys for Defendant
Humana Employers Health
Plan of Georgia, Inc.

CERTIFICATE OF SERVICE

The foregoing pleading was filed electronically with the Clerk of Court using the CM/ECF system. This is to certify that I have this day served counsel for the opposing party in the foregoing matter with a copy of this pleading by depositing in the United States Mail a copy of same in a properly addressed envelope with adequate postage thereon as follows:

James K. Creasy, Esq.
2 Ravinia Drive
Suite 120
Atlanta, Georgia 30346

This 21st day of April, 2021.

/s/ Kenton J. Coppage
Kenton J. Coppage
Georgia Bar No. 187190

Attorney for Defendant
Humana Employers Health
Plan of Georgia, Inc.

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